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Chairman: Mrs. FLORES (Uruguay)

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The meeting was called to order at 10.30 a.m.

AGENDA ITEM 143: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-FIFTH SESSION (continued) (A/48/10, A/48/170-S/25801 and A/48/303)

1. Mr. YAMADA (Japan), referring to chapter III of the report of the International Law Commission (A/48/10), on the topic of international liability for injurious consequences arising out of acts not prohibited by international law, said that, while the draft articles on prevention proposed by the Special Rapporteur provided a good basis for further elaboration, a number of clarifications and improvements were required. First, the proposed draft articles were generally applicable to any activities. However, in view of the probability of harm arising from the activities envisaged in the draft, as well as the magnitude of such harm, the activities should be categorized according to their degree of risk. Secondly, consideration should be given to the role of the draft articles within the overall structure of a liability regime, since prevention, liability and State responsibility were interrelated. It might have been more helpful if the report had briefly and clearly discussed the links among those concepts. Thirdly, the provisions relating to the minimization of harm once it had occurred appeared to pertain more to remedial measures than to prevention, and should therefore be omitted from the draft. Fourthly, draft articles 18 and 19 did not maintain a proper balance between the interests of the States concerned. While the central issue was the protection of the interests of potentially affected States, care should also be taken not to impose excessive obligations on the State of origin since, after all, the activities in question were not prohibited by international law. Fifthly, draft articles 11 to 20 bis did not necessarily follow a logical sequence.

2. His delegation welcomed the Commission's decision to refer the draft articles to the Drafting Committee in the interests of promoting tangible results after 14 years of work on the topic. The Drafting Committee had concluded the first reading of draft articles 1, 2, 11, 12 and 14, and had submitted them to the Commission without commentary. While those articles required further examination, they showed signs of improvement; for example, article 1 defined more clearly the scope of the activities covered by the draft, and article 14 now focused on prevention ex ante, leaving mitigation of harm after its occurrence to future discussions of remedial measures.

3. Turning to chapter V of the Commission's report, he said that, while the Commission should not prejudge its position as to the final form of the draft articles on the law of the non-navigational uses of international watercourses, his delegation expected that the outcome would be a framework convention, rather than model rules. In general, the Commission should endeavour to develop a legally binding instrument which could play a more important role in international law. While his delegation agreed that dispute settlement provisions should be included, it urged the Commission to give careful consideration to their content, in view of the nature of disputes over the use of international watercourses. As to the replacement of the adjective "appreciable" with "significant", not only language, but substance was involved. Consideration should be given to the legal effects of the change, whether it might raise the "threshold" control of the free use of international watercourses, and consistency with the wording used in the draft articles on other topics, such as those in chapter III.

(Mr. Yamada, Japan)

4. The most difficult issue facing the Commission was the question of unrelated confined groundwaters. At the previous session of the Commission, some delegations had supported the Special Rapporteur's proposal that unrelated confined groundwaters should be covered by the draft articles, while others had opposed it. In view of the critical importance of that question to some countries, his delegation preferred to wait for the results of the feasibility study to be carried out by the Special Rapporteur.

5. Mr. SOLIMAN (Egypt), referring to chapter V of the Commission's report said that his country, being almost entirely dependent on the Nile for its sustenance, had followed the topic with the utmost interest since its introduction in 1970.

6. Egypt believed in the regional unity of watercourses, which meant that every watercourse State was entitled to have watercourses situated in its territory remain unchanged, that no State could exercise absolute sovereignty over the part of the watercourse situated in its territory and that every State had the right to use that part as it saw fit, provided that it did not prejudice the rights of other States to make similar use of the watercourse.

7. His delegation supported the Commission's integrated approach aimed at striking a balance between the interests and sovereignty of riparian States and their right to utilize natural resources situated within their boundaries. Any framework convention must leave intact the validity of existing watercourse agreements. The approach of preparing model rules or a framework convention rather than a detailed convention binding on all States deserved support because it took better account of political and security aspects, the specific relations between the watercourse States concerned and the peculiar characteristics of the watercourse itself. More detailed legal rules, moreover, would be difficult to impose.

8. His delegation welcomed the idea of setting up a body for watercourse organization and management, the dissemination of information, the facilitation of consultations between watercourse States, the preparation of prevention plans and cooperation in coping with and eliminating hazards.

9. Regarding the inclusion of dispute settlement provisions in the draft articles, his delegation felt that, as differences among watercourses would present difficulties, requiring specific mechanisms for each case, it would be preferable for the Commission to complete its work on the articles currently under consideration before turning to an assessment of the need for articles pertaining to that question.

10. Egypt also had a number of specific comments on the wording of the articles, which had been submitted in writing and which it hoped would be considered in future readings.

11. Mr. AL-BAHARNA (Bahrain), referring to chapter III of the Commission's report, said that the draft articles on prevention submitted by the Special Rapporteur were based on earlier reports, with the omission of all references to activities causing transboundary harm. For that reason, articles 11 to 20 bis, which dealt with the nature of the concept of prevention, appeared to be

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somewhat incoherent and incomplete. His delegation believed that if the Special Rapporteur had combined elements of the general provisions and the principles contained in his earlier texts with elements of the new provisions, that would have produced a homogeneous whole. In that connection, his delegation agreed that, as stated in paragraph 130 of the Commission's report, the Special Rapporteur had dealt only with the technical articles without providing an overall picture of the obligation of prevention and urged both the Special Rapporteur and the Commission to reformulate the draft articles.

12. As noted in paragraph 120 of the report, the Special Rapporteur had defined preventive measures as those which attempted to ensure that activities under the jurisdiction or control of a State were carried out in such a way as to minimize the probability of an accident which would have transboundary effects. The Special Rapporteur had underscored the words "to attempt" in order to emphasize that the purpose of the obligation was not to prevent the occurrence of any harm, but to compel the State to take legislative and administrative measures in order to minimize the risks of accidents and their transboundary harmful consequences. His delegation failed to understand the logic of that endeavour. It was unclear how the purpose could be something other than to prevent the occurrence of any harm, since it was stated that the risk of accidents should be minimized. Of greater concern, however, were the repercussions of that approach on the proposed regime. In his delegation's view, the articles on prevention should serve as a system of checks and balances for all activities liable to cause transboundary harm. He urged the Commission not to limit the scope of the preventive regime as the Special Rapporteur had done.

13. With regard to the concept of risk, his delegation shared the view expressed in paragraph 119 of the Commission's report with regard to the scope ratione materiae of the draft articles. Part of the problem stemmed from the Commission's earlier approach, whereby activities having a risk of causing and those causing transboundary harm had been considered together. Since the Commission had decided to limit the scope of the topic to prevention, it might be necessary to take a second look at the definitions of "risk", "harm" and "transboundary harm", with a view to identifying the classes of activities to which the articles on prevention should apply.

14. The Special Rapporteur had noted the need to ameliorate the situation faced by developing countries in monitoring activities involving risk, and had suggested that a provision should be included in the section on principles stating that the regime of prevention should take into account those countries' lack of financial and technical resources. Some members of the Commission had believed that that approach did not go far enough and that, as stated in paragraph 135 of the Commission's report, the need of developing countries for preferential treatment should also be reflected in the articles on prevention. His delegation hoped that the Commission would give due consideration to that suggestion in its future work.

15. Draft articles 11, 12, 13 and 14 had been derived from article 1 as formulated in the Special Rapporteur's previous report. While his delegation agreed in principle that the State of origin should have a controlling function, it doubted whether the detailed regulations provided for in those articles were needed. It was necessary to avoid giving credence to the argument that the

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legal regime of prevention was interfering with national jurisdiction. It was also unclear whether the essential element of the process of State control was "prior authorization", as mentioned in draft article 11, or "transboundary impact assessment", as referred to in article 12. The latter concept appeared to be the key to the monitoring process. In that connection, his delegation shared the views expressed in paragraph 144 of the Commission's report.

16. Draft article 14, entitled "Performance of activities", was considered by the Special Rapporteur to be the core of the articles on prevention. However, the wording of the draft article left much to be desired. On the one hand, it failed to incorporate the element of "due diligence"; on the other hand, it appeared to adopt a narrow approach to the concept of prevention. His delegation therefore urged the Commission to review draft article 14 carefully with a view to strengthening its objective, namely, prevention of the risk of transboundary harm. As to draft article 15, entitled "Notification and information", his delegation generally agreed with the principle of notification by the State of origin, while objecting to subparagraph (d), concerning public participation in the decision-making process. Subparagraph (b), concerning the role of international organizations, also called for redrafting, since international organizations could operate only in terms of their constituent instruments.

17. Article 17, entitled "National security and industrial secrets", provided States with an escape route from the legal regime of prevention. Consequently, the concepts of "national security" and "industrial secrets" should be duly qualified and the latter part of the article should be strengthened to ensure a proper balance between the need for security and the provision of information pertaining to transnational hazards. Subject to those caveats, his delegation would support the text of article 17.

18. While Bahrain recognized the importance of the principle of prior consultation, it did not consider it wise to formulate the principle in such imperative terms as had been done by the Special Rapporteur in article 18. In order to be effective, consultations should be based upon mutuality and reciprocity and should never give rise to suspicion of interference or high-handedness. His delegation would therefore like article 18 to be suitably amended to remove its imperative tone. In that context, it wished to point out that the requirement of "finding mutually acceptable solutions regarding the preventive measures" remained a stringent one.

19. His delegation supported article 19, entitled "Rights of the State presumed to be affected", but had reservations with respect to its last sentence, which provided that the State of origin should pay compensation for the cost of the study. Such a requirement might impede the consultations that were necessary to usher in a preventive regime.

20. Article 20, which Bahrain also supported, should constitute a part of the text, even though some of the factors listed were not legal stricto sensu. They would nevertheless constitute useful guidelines for assessing activities that were prone to cause transboundary harm.

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21. It was somewhat premature for the Commission to discuss the question of dispute settlement procedures. While his delegation preferred to reserve its comments on the subject, it agreed with the view expressed in paragraph 189 of the Commission's report "that any dispute settlement procedure should have a technical inquiry commission as an essential component".

22. Ms. GAO Yanping (China) said that the Commission's decision to approach in stages its consideration of the topic of international liability for injurious consequences arising out of acts not prohibited by international law and to establish priorities for the issues to be covered represented a practical and effective approach. Prevention and mitigation of harm were indispensable components of the topic, and their selection for priority consideration was in conformity with a similar tendency in current international environmental legislation.

23. Commenting on the scope of preventive measures, she said that the current concept of hazardous activities was ambiguous. A list should be made of substances that were liable to cause harm in order to clarify the concept of hazardous activities and make clear what activities or substances should not be regulated. An exhaustive list was difficult to prepare, however, since the rapid development of modern science and technology made it extremely difficult to predict what hazardous activities might appear in the future. On the other hand, various specific instruments dealing with different activities and situations already existed, although that did not obviate the need to define more precisely the scope of application of the proposed preventive measures.

24. The series of procedural rules on prevention which the Commission had discussed constituted a complete system that needed to be further revised. For example, with respect to the establishment of a consultation regime, the purpose of consultation was not to achieve a solution acceptable to all, but to exchange views during the consultation process so that a country would not engage in hazardous activities without prudent consideration of the consequences.

25. Another important aspect of preventive measures was the need to take into account the special needs of developing countries. Because of the backward scientific, technological, economic and social conditions of developing countries, certain criteria applicable to developed countries were burdensome and not necessarily suitable for developing countries. On that issue, the Special Rapporteur had suggested that a general provision should be included in the articles on principles to take care of the specific needs of developing countries. Her delegation believed, however, that such a general provision was not sufficient. The principle in question should also be reflected in various related articles. On the issue of transfer of technology, for example, provisions should be formulated to encourage and promote such transfers from developed to developing countries.

26. Lastly, if a series of articles on preventive measures was formulated as a set of primary rules, then failure to implement such measures or to exercise "due diligence" with respect to the rules constituted a wrongful act under international law. Under such circumstances, State responsibility was involved and secondary rules on State responsibility would therefore apply. As a result, there would be no need to formulate the other important part of the topic,

(Ms. Gao Yanping, China)

namely, rules on liability. That was a point which must be taken into account in formulating articles on preventive measures.

27. Turning to the topic of the law of the non-navigational uses of international watercourses, she said that retention of the phrase "flowing into a common terminus" in article 2 (b), which defined a "watercourse", could introduce certain limitations on the geographical scope of the articles. As pointed out in paragraph 365 of the Commission's report, the fact that two different drainage basins were connected by a canal would not make them part of a single watercourse. Such a limitation could help to remove the doubts which some States had over the entire set of draft articles. Given that other States held different opinions on the question, however, a cautious approach was needed when the Commission came to consider the question of retention or deletion of the words "flowing into a common terminus".

28. With regard to the suggestion to include "unrelated confined groundwaters" in the topic, she considered the idea impractical, since the problem could not be solved by removing the concept of a "common terminus" from the definition of a watercourse. Underground waters were already covered in the topic, provided that such waters, together with the surface waters, constituted a unitary whole by virtue of their physical relationship. "Confined groundwaters", however, did not constitute part of a unitary whole and had no physical relationship with surface water, which was the main body of the watercourse. As presented in the context of the topic, the term "watercourse" not only meant a system of surface and underground waters constituting a "unitary whole" but was also defined as a system flowing into a common terminus. It was hard to anticipate whether the draft articles could command wide acceptance; any hasty attempt to include "unrelated confined groundwaters" in the topic would only further complicate the issue and give rise to more controversy. It would therefore be more appropriate not to include unrelated confined groundwaters in the topic. In view of the importance of the question of unrelated confined groundwaters intercepted by national boundaries, however, her delegation would not object to any proposal aimed at treating that question as a separate topic to be included in the Commission's future programme of work.

29. With regard to articles 5 and 7, there was some ambiguity in the relationship between "the equitable and reasonable utilization" of article 5 and the "obligation not to cause appreciable harm" of article 7. It was also important to determine whether appreciable harm constituted a breach of the principle of equitable and reasonable utilization; whether the right to equitable and reasonable utilization was subordinate to the obligation not to cause appreciable harm; and whether the relationship between the two articles achieved a balance between the use of watercourses and environmental protection. In responding to those questions, the Special Rapporteur had proposed to redraft article 7. Her delegation believed that the proposal to delete article 7 warranted consideration, since in practice article 5, together with article 6, implied the content of article 7.

30. China was flexible on the question of including the dispute settlement procedure in the draft articles. However, in drafting the relevant articles, the Commission must bear in mind that the proposed dispute settlement procedure was not the same as the dispute settlement procedure in respect of the

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interpretation and application of the treaty provisions of international conventions in general, and that it should not completely reproduce the dispute settlement procedure of a particular international watercourse regime.

31. The Commission, moreover, should not hasten to make a decision on the final form of the draft articles since few States had as yet commented on the draft articles which had been adopted on first reading. Since each watercourse had its own characteristics and given that the topic touched upon the vital interests of watercourse States, it was very difficult for those States to make comprehensive observations on the draft articles within a short period of time. Consequently, the Commission should not rush to draw conclusions as to the form which the final product on the topic should take. That notwithstanding, her delegation did not object to the Commission's working hypothesis on the framework agreement approach, which was an assumption, not a final conclusion.

32. The law of the non-navigational uses of international watercourses touched upon important issues relating to the national economies and the livelihoods of the populations of watercourse States, and ecological balance and environmental protection. International watercourses, each different in terms of hydrographic, geological, geographical and climatic factors, involved the fundamental interests of and even contradictions between the States concerned. It was therefore difficult to develop a set of legal norms regulating non-navigational uses of international watercourses which would be acceptable to all. Her delegation nevertheless hoped that the Commission would spare no effort to complete the draft articles in order to promote further cooperation among riparian States. With 14 international rivers running through its territory, China was a major international watercourse State. Further progress in reform and openness was bound to accelerate cooperation between China and neighbouring countries in exploiting and utilizing the resources of those watercourses. Her Government attached great importance to the topic and proposed to take an active part in the discussion on it.

33. Mr. HALLAK (Syrian Arab Republic), referring to chapter V of the Commission's report, said that the fact that most States had accepted the draft articles would facilitate the approval of a framework convention, which, in addition to providing guiding principles for future negotiations, would fill a gap in respect of watercourses for which no binding agreements existed. His country, which shared watercourses with other States, attached particular importance to such a convention. Such an approach would not prevent the contracting parties from concluding bilateral or multilateral agreements on specific watercourse issues.

34. Concerning article 1, his delegation felt that the articles should apply also to the use of confined groundwaters inasmuch as they constituted part of a unitary whole and that the definition of an international watercourse contained in article 2 should be maintained, especially the expression "flowing into a common terminus", for the removal of that expression would render the application of the articles difficult.

35. His delegation did not agree with the position taken by the Special Rapporteur that no change should be made in article 5 and felt that the following explanatory text must be added as paragraph 3:

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"'Optimal utilization' of waters does not mean ascertaining the maximum or most efficient utilization from the technological standpoint or the most valuable utilization from the monetary standpoint, nor does it mean that the State capable of making the most efficient use of the watercourse in terms of economy or waste reduction or in any other respect should have a greater claim to the use of the watercourse; rather, it means obtaining the maximum benefits possible for all watercourse States and achieving the highest degree of satisfaction of all their needs while at the same time reducing to a minimum the harm to or unfulfilled needs of each of them".

36. Regarding article 17, his delegation considered that a further paragraph should be added, reading:

"Consultations and negotiations shall be conducted in the presence of an international observer whenever any watercourse State deems it necessary".

37. His delegation also wished to add two articles at the end of the original draft. The first, which would be article 33, would read:

"Waters are equal in value to land, and any person who exceeds the equitable and reasonable share of utilization of an international watercourse agreed upon between the watercourse States shall incur the appropriate penalties provided for in the Charter of the United Nations in the same manner as a person who encroaches on another's land by force".

38. The second additional article would relate to dispute settlement in the event of the failure of negotiations between watercourse States. In that connection, his delegation wished to emphasize that the expressions "international watercourse" and "transboundary waters" had the same meaning from the legal standpoint, just as the terms "apportionment of international waters" and "utilization of the waters of an international watercourse" expressed the same idea and were subject to the same legal rules.

39. His delegation also wished to stress the importance of the comments on the draft articles submitted by the Syrian Government (A/CN.4/447), and hoped that the draft would soon be adopted in the form of a framework convention.

40. Mr. MORSHED (Bangladesh) said that, in order to sustain the momentum of change and to achieve peace and stability in the world, it was necessary to strengthen the rule of law in inter-State relations. The Commission's task in promoting the codification and progressive development of international law was becoming even more crucial in the context of the rapid changes taking place in international relations.

41. Against that background, the idea of establishing an international criminal court for the effective prosecution and punishment of international criminals was an important goal of cooperation among States for enforcing international law in criminal matters. He was convinced, moreover, that the international community could rise to the occasion if it had the necessary political will. In that connection, the recent initiative of the United Nations to establish an ad hoc war crimes tribunal to prosecute war crimes and other violations of international humanitarian law should not be seen as the end of the development

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of international criminal law and should encourage the international community to support the Commission in its work towards the establishment of a permanent international criminal tribunal.

42. With regard to the draft statute for such a tribunal (A/48/10, annex) his delegation supported the proposal contained in article 2 that the tribunal should be a judicial organ of the United Nations in order to enhance its status and acceptance in the international community. It also supported the establishment of a permanent court with its own registry, procuracy and staff, which would provide an opportunity for the international community to enhance the development of international criminal law. In order to be a credible deterrent to international criminals, however, such a court must be objective and impartial.

43. On the question of qualifications of judges, he supported the proposal contained in article 6. In the initial stages, the judges did not need to be permanently located at the seat of the tribunal, although it would be wise to maintain a full-time president who would be responsible for the due administration of the court. As to the election of judges (art. 7), the idea of equitable geographical representation in order to ensure that the institution was truly international in character merited consideration.

44. The office of the prosecutor should be independent; efforts should be made to protect the prosecutor and his staff from any outside interference, as their work was vital to the proper conduct of the trial.

45. His delegation was satisfied with the list of crimes contained in article 22. At the same time, it should be possible to add new crimes to the list in order to reflect developments in international crime. In respect of the alternatives presented under article 23, he preferred the "opting out" system, whereby a State, by becoming a party to the court's statute, would automatically confer jurisdiction on the court over the crimes listed in article 22, although they would have the right to exclude some crimes from such jurisdiction.

46. He endorsed the idea of establishing chambers of the court, as set forth in article 37. To ensure transparency and judicial impartiality, the selection of judges for a chamber should be made on the basis of objective criteria, which could be elaborated in the rules of the court.

47. Article 26 was intended to cover international crimes, such as aggression, which were based on customary international law and which would not otherwise fall within the jurisdiction of the international court. Moreover, the current stage of development of international law clearly called for an international court with jurisdiction over crimes against humanity.

48. Article 44 (Rights of the accused) was acceptable as it stood. It was to be hoped that its provisions would ensure a fair trial for the accused.

49. His delegation considered article 25, which empowered the Security Council to refer cases to the court, to be unnecessary. Nevertheless, if such authority was granted to the Security Council, it should also be accorded to the General Assembly, which, under the Charter, had a broader range of functions, in

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particular those relating to human rights. Granting the General Assembly the power to refer cases to the court would reflect the overall direction of the restructuring process taking place at the United Nations. The purpose of establishing an international court would also be served if the power to refer cases to the court was retained by States under article 29.

50. If the Commission decided to establish the court as an organ of the United Nations, its operational costs should be financed by the regular budget, an assured source of funding which would reinforce the court's authority. If, however, the court came into being through an international convention, the financial obligations would then be borne by the States parties, thus affecting the smooth and effective functioning of the court. The entire matter merited further consideration by all member States.

51. Turning to chapter V of the Commission's report, he said the topic of the law of the non-navigational uses of international watercourses was of crucial importance to his country, which shared the resources of 52 rivers with its neighbours. He emphasized that the rules established in that area should reflect reality and be fair to all parties involved.

52. He welcomed the fact that the Special Rapporteur on the topic had made reference to conservation and management, since water utilization had a direct impact on the environment. He endorsed the idea that watercourse States should reach agreement on the utilization of an international watercourse but noted that such agreement might be ineffective unless there was mandatory exchange of data and information relating to utilization.

53. The relationship between articles 5 and 7 was not clear. It would be preferable to omit article 7 or make it subordinate to article 5, thereby making "equitable and reasonable" the sole criterion States had to meet when utilizing an international watercourse. Furthermore, as long as utilization was equitable and reasonable, a certain level of harm should be acceptable. In the same context, his delegation endorsed the content of article 6 on factors relevant to equitable and reasonable utilization.

54. His delegation did not favour including unrelated confined groundwaters in the definition of a watercourse system: such groundwaters did not fit the criterion provided in article 2(b), under which a watercourse was defined as a system of waters constituting by virtue of their physical relationship a unitary whole. The law relating to groundwaters bore a close relationship to that governing the exploitation of natural resources.

55. Mr. PUISSOCHET (France), referring to chapter III of the Commission's report, said that the Special Rapporteur's ninth report, in which he had examined the issue of prevention in respect of activities having a risk of causing transboundary harm, had considerably facilitated the consideration of a topic which was complex and difficult to delimit.

56. The Commission had rightly accorded priority to the subject of prevention, which, while not touching on the whole issue of liability, would contribute substantially to advancing the work on the topic. Preventive measures promoted development of the law; they gave rise to debate in other forums and reference

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was made to them in certain treaties. In addition, States which authorized activities likely to cause harm in other States were under a legal obligation to take preventive measures.

57. It was doubtful, however, that any consensus existed with regard to the obligation to make reparation, even as a secondary obligation. The Commission would consider that question in the context of the responsibilities of the operator and the State, as well as the obligation to provide insurance.

58. The Special Rapporteur had also raised the issue of obligation of means as opposed to obligation of result. Discussion was limited at the current stage because the answer seemed to depend, at least partially, on the final form the instrument would take. Obligation of means would be most appropriate in the context of model rules, while obligation of result fitted into the context of a convention. In his view, the choice should remain open for the time being. Similarly, it was only after the choice between model rules or a convention had been made that the Commission could consider the possibility of special arrangements for developing countries, an issue which was at present premature, despite the number of interesting suggestions made in that regard.

59. Some Commission members wished to have a detailed classification of activities involving risk. In their view, it was not possible to draft articles having a scope broad enough to be applicable to all categories of activities and, accordingly, a classification system was needed, so that special rules could be established for each category. While the idea was not without merit, it would be very difficult to arrive at an effective classification system.

60. The Commission was in fact mandated to establish general rules as a way of filling in the gaps in the existing situation. However, there was nothing to prevent the establishment of specific rules in particular cases. For example, extremely restrictive preventive measures were required in the field of nuclear security, and such measures could only be established under ad hoc technical instruments which evolved in step with progress in that field. It was not possible to establish a comprehensive set of preventive measures which applied to every possible activity. However, the Commission could and should strive for measures which took into account any activity involving an exceptional risk.

61. Turning to the draft articles themselves, he noted that several Commission members had questioned the need for article 11 (Prior authorization) which, in their view, simply stated the obvious. He favoured keeping the article because it set forth one of the basic means of implementing the principle of prevention and constituted an obligation for both States and operators. Nevertheless, the Commission might reconsider the article's place in the whole series: it belonged more logically after the provisions relating to notification and assessment. The issue of prior authorization gave rise to a number of problems, including those relating to periodic renewal, withdrawal of authorization, and new authorizations; there was certainly room for improvement in those respects.

62. Article 12 (Transboundary impact assessment) should be reworded to emphasize that the territorial State should take an active part in the impact assessment procedure, an action in its own interest since it would be the first to be affected. As to the procedure itself, some had favoured incorporating a

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detailed list of questions which had to be answered during the assessment. That goal was laudable, but not very realistic.

63. Article 14, which established the supervisory obligation of States, was essential. It was, as the Special Rapporteur had stated, the core of the articles on prevention. The article would have even more force if it were limited to prevention ex ante, in the strict sense. The obligations of States after harm had been done belonged under the second part of the topic, which dealt with remedial measures.

64. Article 15 concerned the sensitive subject of notification and information and the issues it raised merited careful consideration. One question was whether the assessment should be transmitted to other States. If the operator did the assessment, it might contain confidential technical data and could not be made available to a third party. A State's assessment, however, would be focused on ascertaining the extent to which the proposed activity conformed to the regulations; such information could certainly be sent to a third party. He agreed with the Special Rapporteur that information and notification should be provided "as soon as possible"; that wording should in fact be reintroduced into the article. Another issue was whether the populations involved should be informed. That decision was the responsibility of each State concerned. Yet another question was the role to be played by international organizations in terms of notification and information. He had some reservations about imposing any obligation in that area. However, the question might be considered with regard to organizations responsible for areas not subject to State jurisdiction.

65. Article 18 on prior consultation raised a question of principle. No one doubted that States were under an obligation to hold consultations if one State was not satisfied by the preventive measures taken by the other. However, requiring those States to arrive at "mutually acceptable solutions" was idealistic and would, in reality, lead to an impasse.

66. Article 19 rightly enabled a State presumed to be affected to make its point of view known, which was entirely consistent with the rest of the articles. However, care should be taken to prevent article 19 from serving as a pretext for continual interference in the industrial policy of another State. Furthermore, the expression "State presumed to be affected" was not entirely accurate; it would be better to refer to a "State likely to be affected".

67. He did not see the need for a provision dealing with dispute settlement procedures, at least not at the current stage. The matter could be reviewed after the principal orientations and the final form of the draft articles had been determined. Moreover, the scope of such a provision was not clear. If a State refused to honour its prevention obligations, it would incur liability. In that case, the issue would move into the realm of State responsibility, demonstrating once again the close link between that topic and the topic of international liability.

68. Turning to chapter V of the Commission's report, he said that there had been a renewal of interest in recent years in the topic of the law of the non-navigational uses of international watercourses. The Commission's work must be considered in the light of recent developments, such as the conclusion in

(Mr. Puissochet, France)

1991 of the Convention on Environmental Impact Assessment in a Transboundary Context, the signing in 1992 of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes; and the 1992 United Nations Conference on Environment and Development. His own country was a party to the two conventions and had participated actively in the Rio Conference.

69. It was a commonplace that rivers, like air, knew no boundaries. However, the industrial era had in the long run destroyed the illusion that those resources were inexhaustible. There was general agreement that the current situation required urgent action. In that context, he welcomed the fact that the Commission had completed its first reading of the draft articles on international watercourses.

70. The subject of the final form of the draft articles had been discussed exhaustively. In his view, the two solutions proposed were not mutually exclusive and a middle ground could be found. The articles of a general nature belonged in a framework convention. Yet, a convention would not resolve all the problems connected with the utilization of international watercourses, which had to take into account a number of special circumstances, among them the fact that some rivers were the subject of specific agreements and others were not; the new situation created by the breaking-up of States; and the demands that might be created by technological progress. The Commission could never hope to cover every particular case, and special agreements would always be needed. It could, however, provide model rules which could then be adapted for use in future conventions.

71. It seemed premature to discuss dispute settlement procedures until the final form of the draft articles had been decided. Moreover, States were already under an obligation to settle their disputes peacefully, as set forth in the Charter of the United Nations. The Commission should probably go no further, leaving States free to determine the manner in which they should settle their differences.

72. For the details of his delegation's views on the rest of the draft articles, he referred Committee members to the written text of his statement.

The meeting rose at 12.20 p.m.